



## Climate change litigation and state responsibility in international law

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### Abstract

Climate change has become a defining global challenge, prompting vulnerable states and communities to increasingly utilize litigation as a mechanism to clarify state obligations and seek remedies for environmental harm. This paper explores the intersection of state responsibility and climate change within international law, examining how traditional principles, such as the no-harm rule and due diligence are being adapted to address the complexities of global warming. While the diffuse nature of greenhouse gas emissions presents significant hurdles regarding causation and attribution, domestic and international courts are increasingly bridging the gap between environmental protection and human rights. By analyzing landmark cases like *Urgenda Foundation v. State of the Netherlands* and the emergence of advisory proceedings before the International Court of Justice, the study argues that litigation is evolving into a critical tool for shaping a new normative framework of accountability. Ultimately, climate litigation complements political negotiations by upholding the rule of law and protecting the rights of present and future generations against the existential threat of climate change.

**Keywords:** Climate change litigation, state responsibility, human rights, international environmental law, due diligence.

### Introduction

Climate change has emerged as one of the most pressing global challenges of the twenty-first century, raising fundamental questions about responsibility, accountability, and justice in international law. As the impacts of climate change intensify, vulnerable states and communities have increasingly turned to courts and tribunals to seek remedies and clarify legal obligations of states regarding greenhouse gas emissions and environmental protection. Climate change litigation has therefore become an important mechanism for enforcing international environmental obligations and advancing the development of international law. This paper examines the evolving relationship between climate change litigation and state responsibility. It explores the legal basis for holding states accountable under international law, the role of international and domestic courts in addressing climate harm, and the emerging jurisprudence that connects environmental protection with human rights obligations. The study also analyzes recent developments before international judicial bodies and the implications of advisory proceedings before the International Court of Justice concerning climate change obligations. By examining legal principles such as due diligence, the no-harm rule, and obligations under the Paris Agreement, the paper argues that climate litigation is gradually shaping a new normative framework of state responsibility. While significant legal and practical challenges remain particularly concerning causation, attribution, and enforcement climate litigation has become a critical tool for advancing environmental justice and strengthening international accountability.

Climate change represents a profound threat to global environmental stability, economic development, and human security. Rising temperatures, extreme weather events, sea level rise, and ecosystem degradation have produced far-reaching consequences for states and individuals alike. Although the scientific consensus regarding the causes and consequences of climate change is widely accepted, the legal mechanisms for addressing responsibility remain complex and contested. International law traditionally relies

on state consent and cooperation, yet climate change has demonstrated the limitations of these mechanisms in addressing collective global problems.

In response to the perceived inadequacy of political negotiations and international agreements, climate change litigation has emerged as a significant legal strategy. Courts across the world have increasingly been called upon to interpret environmental obligations, human rights commitments, and state responsibilities in the context of climate change. These cases reflect a broader shift in international legal discourse, where litigation is being used not only to seek remedies but also to clarify normative standards governing state conduct.

Climate change litigation operates at both domestic and international levels. Domestic courts have often played a pioneering role in recognizing the legal duties of governments to mitigate greenhouse gas emissions, while international tribunals are increasingly being asked to provide guidance on the obligations of states under international law. The growing body of climate-related jurisprudence suggests that litigation may become a key mechanism for shaping the future of environmental governance.

This paper explores the intersection of climate change litigation and state responsibility in international law. It begins by examining the conceptual framework of state responsibility and environmental obligations. It then analyzes the development of climate change litigation across domestic and international legal systems. The paper also evaluates emerging legal trends, including the use of human rights arguments and the pursuit of advisory opinions from international courts. Finally, it assesses the broader implications of these developments for the evolution of international law.

### Conceptual Foundations of State Responsibility in Environmental Law

The doctrine of state responsibility occupies a central place in international law. It establishes the conditions under

which a state may be held accountable for internationally wrongful acts and outlines the legal consequences of such violations. The foundational principles governing state responsibility are reflected in the Articles on Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission in 2001. According to these principles, a state incurs responsibility when conduct attributable to it constitutes a breach of an international obligation.

Environmental harm caused by transboundary pollution has long been recognized as an area where state responsibility may arise. One of the foundational principles in this regard is the “no-harm rule,” which requires states to ensure that activities within their jurisdiction do not cause significant damage to the environment of other states. This principle was famously articulated in the Trail Smelter Arbitration, where an international tribunal held that states must prevent activities that cause serious transboundary environmental harm.

In the context of climate change, however, the application of state responsibility becomes more complicated. Climate change results from cumulative emissions produced by multiple states over long periods of time. This diffuse nature of causation creates difficulties in identifying specific responsibility for particular harms. Moreover, climate obligations under international agreements often take the form of collective commitments rather than strict legally binding duties imposed on individual states.

Despite these challenges, legal scholars and practitioners increasingly argue that the principles of due diligence and prevention may provide a basis for holding states accountable for climate-related harm. Due diligence requires states to take reasonable measures to prevent activities within their jurisdiction from causing environmental damage. Failure to adopt adequate mitigation or adaptation measures could therefore potentially constitute a breach of international obligations.

### **The Rise of Climate Change Litigation**

Over the past decade, climate change litigation has expanded dramatically across jurisdictions. Individuals, civil society organizations, and affected communities have filed lawsuits against governments and corporations seeking stronger climate action. These cases often rely on constitutional rights, environmental statutes, and international legal principles to challenge inadequate climate policies.

One of the most influential cases in this field is the landmark decision of the *Urgenda Foundation v. State of the Netherlands*. In this case, the Dutch Supreme Court held that the government had a legal obligation to reduce greenhouse gas emissions in order to protect the human rights of its citizens. The court relied on international human rights norms, including the right to life and the right to private and family life, to justify its decision.

The *Urgenda* case has had a profound impact on climate litigation globally. Courts in several countries have subsequently adopted similar reasoning, emphasizing the responsibility of governments to protect citizens from the foreseeable harms of climate change. This development reflects a broader trend in which climate change is increasingly framed as a matter of human rights rather than merely environmental regulation.

Another important dimension of climate litigation involves strategic cases brought before international tribunals and regional human rights bodies. For example, cases have been filed before institutions such as the European Court of Human Rights and the Inter-American Court of Human Rights seeking recognition of state obligations to prevent climate harm. These proceedings highlight the growing recognition that environmental protection is closely linked to the realization of fundamental human rights.

### **Climate Change and Human Rights Obligations**

The relationship between climate change and human rights has become a central theme in contemporary legal debates. Climate impacts such as rising sea levels, extreme weather events, and food insecurity can directly threaten the enjoyment of basic human rights, including the rights to life, health, water, and housing. As a result, courts and international bodies have increasingly considered climate change through the lens of human rights law.

The integration of human rights principles into climate litigation has several significant implications. First, it expands the range of legal arguments available to claimants seeking stronger climate action. Rather than relying solely on environmental treaties, litigants can invoke constitutional protections and international human rights obligations to challenge government inaction.

Second, human rights-based climate litigation emphasizes the duty of states to protect vulnerable populations. Climate change disproportionately affects marginalized communities, including indigenous peoples, coastal populations, and residents of small island states. Recognizing climate harm as a human rights issue therefore reinforces the ethical and legal imperative for states to take meaningful action.

Third, the human rights approach provides a normative framework for evaluating state conduct. Courts may assess whether governments have taken reasonable measures to mitigate emissions, implement adaptation strategies, and safeguard the rights of affected individuals. In this sense, human rights law acts as a bridge connecting environmental protection with broader principles of justice and accountability.

### **Advisory Proceedings and the Role of International Courts**

Recent developments in international law suggest that international courts may play an increasingly important role in clarifying the legal obligations of states regarding climate change. Several states and international organizations have sought advisory opinions from international tribunals in order to establish authoritative interpretations of climate-related legal principles.

In particular, a request for an advisory opinion has been submitted to the International Court of Justice concerning the obligations of states to protect the climate system for present and future generations. This initiative was spearheaded by a coalition of small island states that face existential threats from rising sea levels. These states argue that international law must provide clearer standards of responsibility for major greenhouse gas emitters.

Advisory opinions from international courts do not create binding obligations in the same manner as contentious judgments. Nevertheless, they carry significant legal authority and can influence the development of international

law. An advisory opinion on climate change could therefore clarify the scope of state obligations under existing legal principles, including the duty to prevent transboundary harm and the obligation to cooperate in addressing global environmental challenges.

The potential impact of such an opinion extends beyond the international legal system. Domestic courts often rely on international jurisprudence when interpreting national laws and constitutional provisions. As a result, guidance from international tribunals could strengthen climate litigation efforts across multiple jurisdictions.

### **Challenges in Establishing State Responsibility**

Despite the growing momentum of climate litigation, several legal and practical obstacles remain. One of the most significant challenges concerns the issue of causation. Climate change results from the cumulative emissions of numerous actors over long periods of time. Establishing a direct causal link between the actions of a particular state and specific environmental harm is therefore extremely difficult.

Another challenge involves the attribution of responsibility. Under international law, a state may be held responsible only for conduct attributable to it. However, a substantial portion of greenhouse gas emissions originates from private corporations and non-state actors. Determining the extent to which states are responsible for regulating these activities remains a contentious issue.

Enforcement also presents a major difficulty. Even when courts recognize the legal obligations of states to reduce emissions, implementing these judgments requires political will and institutional capacity. International courts generally lack direct enforcement mechanisms, and compliance often depends on the cooperation of states.

Furthermore, there are concerns about the potential limits of judicial intervention in complex policy matters. Climate governance involves economic, technological, and political considerations that may fall outside the traditional expertise of courts. Critics argue that excessive reliance on litigation could undermine democratic decision-making processes.

Nevertheless, proponents of climate litigation contend that courts play an essential role in upholding the rule of law and protecting fundamental rights. By clarifying legal obligations and holding governments accountable, judicial decisions can complement political negotiations and encourage stronger climate policies.

### **Implications for the Evolution of International Law**

The rise of climate change litigation represents a significant transformation in the practice of international law. Traditionally, environmental governance relied primarily on diplomatic negotiations and treaty-based cooperation. Litigation introduces a new dimension of accountability by allowing affected individuals and communities to challenge state conduct directly.

This development also reflects a broader trend toward the judicialization of international environmental governance. Courts are increasingly involved in interpreting international norms, assessing state conduct, and providing remedies for environmental harm. In doing so, they contribute to the gradual evolution of legal standards governing environmental protection.

Climate litigation may also reshape the concept of state responsibility itself. As courts grapple with issues such as

cumulative harm, shared responsibility, and intergenerational equity, new legal doctrines may emerge to address these challenges. For instance, the concept of common but differentiated responsibilities—recognized in international environmental agreements—may influence the allocation of responsibility among states with varying levels of historical emissions and economic capacity.

Moreover, climate litigation highlights the growing recognition that environmental protection is inseparable from broader issues of human rights, development, and global justice. This integrated perspective may encourage the development of more comprehensive legal frameworks capable of addressing the complex challenges posed by climate change.

### **Conclusion**

Climate change litigation has emerged as one of the most transformative developments in contemporary international environmental law. As the consequences of global warming intensify and political responses remain uneven, courts and tribunals are increasingly being asked to clarify the legal obligations of states with respect to climate mitigation and environmental protection. The rise of climate-related litigation demonstrates a growing recognition that climate change is not merely a political or scientific challenge, but also a legal issue that raises fundamental questions concerning accountability, justice, and the rule of law in the international system.

The doctrine of state responsibility provides an important conceptual framework for understanding these developments. Traditional principles such as the prevention of transboundary harm, due diligence obligations, and the duty to cooperate in addressing global environmental problems remain highly relevant in the climate context. At the same time, the unique characteristics of climate change—particularly the cumulative nature of greenhouse gas emissions and the multiplicity of contributing actors—pose significant challenges for the application of existing legal doctrines. Establishing causation, attributing responsibility, and determining appropriate remedies require innovative legal approaches that go beyond conventional models of liability.

Judicial decisions in various jurisdictions have already begun to reshape the legal landscape. Landmark rulings, including those delivered in cases such as *Urgenda Foundation v. State of the Netherlands*, illustrate how courts can interpret existing legal principles in ways that impose meaningful obligations on governments to reduce emissions and protect citizens from climate harm. These cases demonstrate that human rights law can play a crucial role in strengthening climate governance by linking environmental protection to the protection of fundamental rights such as life, health, and dignity. Through this jurisprudence, courts are gradually contributing to the emergence of a normative framework that recognizes climate stability as a matter of legal entitlement rather than political discretion.

International institutions are also becoming increasingly involved in the clarification of climate obligations. The ongoing advisory proceedings before the International Court of Justice regarding the responsibilities of states in relation to climate change have the potential to significantly influence the development of international law. Although advisory opinions are not legally binding in the same manner as contentious judgments, they carry considerable

interpretative authority and may shape the evolution of international legal norms. In particular, such opinions could clarify the extent to which existing treaties, customary international law principles, and human rights obligations impose duties on states to mitigate climate change and prevent environmental harm.

Nevertheless, climate change litigation is not without limitations. Courts operate within institutional and jurisdictional constraints, and judicial decisions alone cannot substitute for comprehensive political and economic reforms. Climate governance ultimately requires coordinated action by states, international organizations, and private actors. Litigation should therefore be understood not as a replacement for political processes but as a complementary mechanism that reinforces accountability and ensures that governments adhere to their legal commitments.

Despite these limitations, climate litigation has already produced significant normative and practical effects. It has encouraged governments to strengthen climate policies, enhanced public awareness of environmental rights, and stimulated the development of new legal doctrines that address complex global challenges. Perhaps most importantly, it has provided a platform for vulnerable communities and future generations to demand greater responsibility from states and corporations whose activities contribute to climate change.

In the coming decades, climate litigation is likely to play an increasingly central role in shaping the evolution of international environmental law. As scientific evidence becomes more precise and legal arguments more sophisticated, courts may continue to expand the scope of state obligations in relation to climate protection. This process may ultimately contribute to the consolidation of a more robust system of international accountability—one that recognizes the protection of the global climate system as a shared legal responsibility of the international community.

In this sense, climate change litigation represents not only a response to environmental crisis but also an important step in the broader evolution of international law. By integrating principles of environmental protection, human rights, and state responsibility, the emerging jurisprudence of climate litigation may help establish a legal order capable of addressing one of the most profound challenges facing humanity in the twenty-first century.

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